

SENATE BILL NO. 413

INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE EXCEPTION FOR A WATER RIGHT PERMIT FOR AN IMPOUNDMENT OR PIT THAT APPROPRIATES WATER FOR USE BY LIVESTOCK IF THE MAXIMUM CAPACITY OF THE IMPOUNDMENT OR PIT IS LESS THAN 15 ACRE-FEET AND THE APPROPRIATION IS LESS THAN 30 ACRE-FEET A YEAR AND IS FROM A SOURCE OTHER THAN A PERENNIAL FLOWING STREAM AND THE IMPOUNDMENT OR PIT IS TO BE CONSTRUCTED ON AND WILL BE ACCESSIBLE TO A PARCEL OF LAND THAT IS OWNED OR UNDER THE CONTROL OF THE APPLICANT AND THAT IS 40 ACRES OR LARGER; AMENDING SECTIONS 85-2-113, 85-2-306, AND 85-2-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-113, MCA, is amended to read:

"85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in ~~85-2-306(1)~~ 85-2-306(2);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4)."

Section 2. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source

1 from two or more wells or developed springs exceeding this limitation requires a permit.

2 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground
3 water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided
4 by the department through its offices.

5 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a
6 certificate of water right, return a defective notice for correction or completion, together with the reasons for
7 returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and
8 refiled with the department within 30 days of notification of defects or within a further time as the department may
9 allow, not to exceed 6 months.

10 (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation
11 is the date of refiled a correct and complete notice with the department.

12 (c) A certificate of water right may not be issued until a correct and complete notice has been filed with
13 the department, including proof of landowner notification as necessary under this subsection (1). The original
14 of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office
15 in Helena. The date of filing of the notice of completion is the date of priority of the right.

16 ~~(2)~~(3) An appropriator of ground water by means of a well or developed spring first put to beneficial use
17 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force
18 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
19 subsection ~~(4)~~ (2), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
20 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing
21 of a notice, as provided in subsection ~~(4)~~ (2), or the date of the filing of the claim of existing water right.

22 (4) An appropriation under this subsection (3) is an existing right, and a permit is not required. However,
23 the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except
24 that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall
25 issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under
26 the adjudication proceedings provided for in 85-2-236.

27 ~~(3) A permit is not required before constructing an impoundment or pit and appropriating water for use~~
28 ~~by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation~~
29 ~~is less than 30 acre-feet a year and is from a source other than a perennial flowing stream and the impoundment~~
30 ~~or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the~~

1 applicant and that is 40 acres or larger. As used in this subsection, "perennial flowing stream" means a stream
2 that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However,
3 within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed
4 by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the
5 department shall then automatically issue a provisional permit. If the department determines after a hearing that
6 the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the
7 permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions,
8 restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

9 (4)(5) A person may also appropriate water without applying for or prior to receiving a permit under rules
10 adopted by the department under 85-2-113."

11
12 **Section 3.** Section 85-2-322, MCA, is amended to read:

13 **"85-2-322. Hearing -- order.** (1) The department shall conduct a hearing on the proposed suspension
14 or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks,
15 not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or
16 counties in which the source is located. The department shall serve by mail a copy of the notice and proposal
17 not less than 30 days before the hearing upon each person or public agency known from the examination of the
18 records of the department to be a claimant, appropriator, or permitholder of water in the source.

19 (2) The department may by order suspend action on and shall close the source and refuse to accept
20 a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the
21 allegations required by 85-2-321 to be contained in the proposal.

22 (3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the
23 class of applications to which the suspension or closure, or both, applies.

24 (4) Upon adoption of the order, the department shall refuse to accept any application for a permit under
25 this part for the class of application for which closure is ordered under ~~this section and~~ 85-2-321 and this
26 section. If the order suspends action on pending applications, the department shall notify the applicant that action
27 on ~~his~~ the application is suspended.

28 (5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings
29 under this section, the department may suspend action on pending applications of the class until the hearing is
30 conducted under this section and, as part of its final order, may grant, deny, or condition the applications under

1 ~~85-2-306(3)~~, 85-2-310, and 85-2-311 or continue the suspension under this section."

2
3 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured,
4 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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6 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 6. Applicability.** [This act] applies to impoundments or pits on which
9 construction was begun on or after [the effective date of this act].

10 - END -